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REPORT OF REFEREE

JUNE 21, 1962

Wednesday, February 8, 1961, before Hon. W. C. Boyd, Referee in Bankruptcy, hearing was held at Sumter, S. C.

Appearing were:

Wendell M. Levi, Esq. and
Philip Wittenberg, Esq. — For the Trustee
M. M. Weinberg, Jr., Esq. — For the Bankrupt and for the Creditor

The purpose of this hearing was to determine whether or not a certain chattel mortgage executed by the bankrupt corporation to Ruth K. Van Dolson was in fact and in law a valid chattel mortgage, thus entitling said creditor to be a secured creditor. Also, the Trustee claims that certain payments made to Robert Van Dolson amounted to preference and restoration of the amount of such payments should be made by Mr. Van Dolson.

Testimony was taken from Robert Van Dolson, President of the bankrupt; Ruth K. Van Dolson, creditor; Arthur H. Wilder, Attorney at Law, who at one time had represented both the corporation and various stockholders; S. A. Benson, Certified Public Accountant, and E. A. Meyers, who at one time was a stockholder and employee of the bankrupt corporation.

At the conclusion of the testimony and within due time, memorandum and argument was submitted on behalf of all parties by their respective attorneys.

Seven contentions were advanced on behalf of the Trustee in Bankruptcy, as follows:

1. Contention was made that mortgage was null and void due to § 45-156 of the 1952 Code of Laws.

2. Contention was made that the chattel mortgage was executed in violation of the by-laws of said corporation.

3. That the chattel mortgage was fraudulent and therefore void under and by virtue of the provisions of Title 11, U. S. C. A., § 107 (d) (2) (a) (b) (c) (d).

4. Contention was made that the note and chattel mortgage was in violation of the Statute of Elizabeth, § 57-301 S. C. Code of Laws.

5. Contention was made that no consideration advanced for the mortgage.

6. Contention was made that only 50% consideration was advanced for the mortgage.

From the evidence, I find as a fact that the mortgage, which secures promissory note in the amount of Ten Thousand Seven Hundred Seventy-Six and 40/100 ($10,776.40) Dollars given by bankrupt to Ruth K. Van Dolson and recorded on March 23, 1960, was for a present consideration in the amount of Ten Thousand ($10,000.00) Dollars, paid in cash by Mrs. Van Dolson to the bankrupt corporation, and which amount was disbursed to creditors of the corporation, is a valid obligation to the extent of Ten Thousand ($10,000.00) Dollars and that the bankrupt corporation is indebted to Ruth K. Van Dolson in the sum of Ten Thousand ($10,000.00) Dollars, together with the unpaid interest thereon, and she is entitled to proceed as a secured creditor.

From the evidence, it appears that within four (4) months prior to the filing of the involuntary petition of August 4, 1960, Mr. Robert Van Dolson reimbursed himself in the amount of Five Hundred ($500.00) Dollars for an advance to the corporation. On May 6 he repaid himself an advancement of Thirty-Three ($33.00) Dollars; on May 21 he reimbursed himself for an advancement in the sum of Three Hundred ($300.00) Dollars, all together totaling Eight Hundred Thirty-Three ($833.00) Dollars. At the time these advancements were made, the corporation was insolvent and Mr. Van Dolson knew or should have known of this condition. Such repayments to him amounted to an unlawful preference under the Bankruptcy Act and he should be required to restore to the Trustee the sum of Eight Hundred Thirty-Three ($833.00) Dollars, and it is so ORDERED.

Mr. Van Dolson also reimbursed hirself from the bankrupt corporation the sum of Six Hundred Seventy-Six and 40/100 ($676.40) Dollars which amount had been advanced to the corporation. This amounted to an unlawful preference under the Bankruptcy Act and Mr. Van Dolson

should restore to the Trustee that amount and it is so ORDERED.

/s/ W. C. BOYD,
Referee in Bankruptcy.

Columbia, South Carolina,
June 21, 1962.

UNITED STATES DISTRICT COURT, D. SOUTH CAROLINA COLUMBIA DIVISION

JULY 6, 1965

Before this Court are cross-Petitions for Review of the Order of the Referee in Bankruptcy dated June 21, 1962. Arguments of counsel fully explored, in the open court hearing of June 22, 1965, all the facets of contentions between the parties. Thereafter the court took the matter under advisement, reviewed a transcript of certain testimony taken before the Special Referee at Sumter, S. C. February 8, 1961, and examined the entire file and exhibits.

The Referee in Bankruptcy had ample evidence before him to support his findings and Order. Indeed, if credibility be an issue, he was in best position to pass thereon, as the testimony was given before him.

The Petitions for Review are denied and the Order of the Referee affirmed as to all findings.

AND IT IS SO ORDESED.

/s/ ROBERT W. HEMPHILL,
United States District Judge.

Columbia, South Carolina,
July 6, 1965.

The Court, once the matter was called to its attention, repeatedly afforded opportunities for a hearing.

A TRUE COPY. ATTEST.
/s/ HELEN BREELAND,
Clerk of U. S. District Court,
East. Dist. So. Carolina.

OPINION OF THE COURT OF APPEALS
MAY 2, 1966

PER CURIAM:

The District Court's order in bankruptcy approving a report of the Referee is now brought here on appeal by the trustee. Because there is no statement, either in the report or the order, of the conclusions of law underlying the decisions, we cannot review them with certainty. Therefore we must vacate the order and remand the cause for correction of this deficiency in the record.

Chiefly, the controversy involves the validity of a chattel mortgage executed by the bankrupt, a corporation chartered and doing business in South Carolina, to secure the payment of its note of $10,676.40, which was given to the appellee for moneys advanced by her to the corporation. She was the wife of a director and officer, and was herself a director and officer. The trustee attacked the chattel mortgage on two grounds. The first was that the mortgage was void by virtue of sections 45-155 and 156, Code of Laws of South Carolina, 1952, declaring unlawful and invalid any mortgage in which the amount of the indebtedness therein stated to be secured is in excess of the sum actually received by the borrower. The second point was that the instrument was void because it was not executed and delivered either according to the corporate by-laws, as required by section 12-102(4) of the Code, or common-law principles governing transactions between corporations and interested officers and directors.

Other claims of the trustee on this appeal are for the recovery of interest paid by the corporation to the appellee-mortgagee on the note and also of amounts drawn as salary by the dominant stockholder and director. The fact that the latter items were not *mentioned* by the Referee is but another example of the inadequacy of the record.

While a large part of the facts surrounding the execution of the note and mortgage were stipulated before the Referee, many determinative circumstances were not included. The Referee made no detailed findings of fact in respect to the note, mortgage or interest paid. He was content to say that while the mortgage put the amount secured

at $10,776.40, only $10,000.00 had been advanced by the lender. However, the obligations were held valid because they were "for a present consideration in the amount of Ten Thousand ($10,000.00) Dollars, paid in cash by . . . [the lender] to the bankrupt corporation, and which amount was disbursed to creditors of the corporation. . . ."

Nowhere does the Referee give his reasons for holding the two documents to have been duly authorized under the corporate by-laws and the State statute. Nor does he state his conclusions of law upon the effect of the statutes annulling a mortgage which secures an amount in excess of the sums actually loaned upon it. Consequently, we are left to guess on these critical features.

As the assault upon the mortgage is mounted on State laws with which the Referee and the District Judge have far more familiarity than do we, their interpretations of these enactments and their conclusions of law upon the transaction are highly important on appeal.

The Bankruptcy Act provides for a review of a Referee's order by the District Judge on a certificate by the Referee of the proceedings. §§ 2a(10), 29a(8), and 39c, 11 U.S.C. 11a(10), 67a(8) and 67c. General Order 47 of the Supreme Court, 11 U. S. C. foll. 53, prescribes what the Referee shall include in his certificate and how the judge acts upon it, as follows:

> "Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and *conclusions of law*, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions." (Accent added.)

This provision applies to all orders of a Referee brought to the District Court for review. *Rosehedge Corp. v. Sterrett*, 274 F. (2d) 786 (9 Cir. 1960).

As the General Order has not been followed by the Referee and as we do not have the District Judge's reasons for accepting the Referee's reading and application of the

State law, we set aside the order on appeal and remand the cause to the District Court for recommitment to the Referee. In no way do we intimate any invalidity in the note or mortgage; we seek only to be better advised of the meaning and effect of the pertinent South Carolina law.

As the parties to the appeal are not responsible for the faulty record, the costs here will be taxed against the appellant with reimbursement out of the assets of the bankrupt estate.

ORDER OF REFEREE

JUNE 28, 1967

An Order approved by the District Court was vacated on appeal to the Circuit Court of Appeals for the Fourth Circuit and recommitted to me in order that I should set forth more complete findings of fact and conclusions of law with reasons therefor. *Faucette, Trustee v. Van Dolson,* 360 F. (2d) 611, dated May 2, 1966.

FACTS

On October 28, 1959, Lighting Center, Inc., was incorporated under the laws of the State of South Carolina. Sixty (60) shares of $100.00 par value stock were authorized, and thirty (30) shares were issued, ten (10) shares each to J. W. Harper, President, and Edward Meyers, Treasurer, and five (5) shares to Fannie L. Harper, Vice-President, and E. B. Johnson, Secretary. The corporation commenced business in November, 1959, with Meyers as General Manager.

On or about March 1, 1960, differences arose between the principals in the corporation, Meyers discussed the business with Robert Van Dolson, who operated a pet shop next door. As a result of this discussion, Van Dolson agreed to and did purchase the interest of the Harpers and Johnson. The purchase was consumated during the evening of March 5, 1960, and Van Dolson acquired the twenty (20) shares of stock for the total sum of $2,676.40.

Some time prior to the transaction mentioned, Van Dolson and his wife, Ruth K. Van Dolson, sold real estate which they jointly owned for some $50,000.00, and the proceeds were deposited in joint savings and checking accounts

entitled "Robert Van Dolson or Mrs. Ruth Van Dolson." Van Dolson drew his check on the joint checking account for $2,676.40 in payment of stock purchased by him. After the purchase of the Harpers' and Johnson's interest by Van Dolson a meeting of the stockholders was held which was attended by Mr. Clifton, who apparently acted as attorney for Van Dolson, and Meyers, the sole stockholders. Meyers and Van Dolson were named to the Board of Directors, the Harpers and Johnson having resigned. Meyers was named President and General Manager and Van Dolson, Secretary and Treasurer, and Mrs. Van Dolson, Vice-President. The bylaws provide that each officer is a member of the Board of Directors. From the testimony before me, it is obvious that neither Van Dolson nor Mrs. Van Dolson knew anything about the lighting business and relied mainly on information given to them by Meyers. At the time of the acquisition by Van Dolson of an interest in the bankrupt corporation it was thought that $10,000.00 in fresh money would enable the corporation to pay off pressing creditors and continue a profitable business.

At the directors and stockholders meeting held on May 5, 1960, it was decided that a loan of $10,000.00 should be made by the corporation from Ruth Van Dolson, and this loan was actually consummated on March 22, 1960, all documents including note and chattel mortgage being prepared by Mr. Clifton, attorney for the bankrupt. The note and chattel mortgage to Ruth K. Van Dolson to secure the $10,000.00 loan was actually given in the amount $10,676.40. (It is my opinion from the testimony and after hearing the witnesses that Mrs. Van Dolson was not fully cognizant of what was going on and that the note should have been $10,000.00 instead of $10,676.40, which amounted to a scrivener's error.) At no time has an attempt been made by her to collect more than $10,000.00. At the time the chattel mortgage was given to secure the note in question, which chattel mortgage covered the inventory, the inventory was valued at $17,526.58 which was subsequently found to be an overvaluation.

The bylaws of the corporation provide that 84% of the outstanding stock shall constitute a quorum at all meetings

of stockholders and that a majority of the quorum, whether stockholders or directors, may decide any question coming before the meeting. The vote of the directors and/or the stockholders, Meyers ten (10) shares, Van Dolson twenty (20) shares, to borrow the money from Mrs. Van Dolson and to give the corporation note and chattel mortgage is attacked by the Trustee on the grounds that Van Dolson, having an interest in the note and chattel mortgage, was barred from participating, and his vote should not be counted. This will be hereinafter discussed.

Within four months prior to the filing of the involuntary petition for bankruptcy, Van Dolson reimbursed himself in the amount $500.00 for an advancement to the corporation, for an advancement of $33.00 and an advancement of $300.00 or a total of $833.00. He also reimbursed himself from the funds of the corporation the sum of $676.40.

Van Dolson likewise paid to himself as salary from April 23, 1960, to date the petition was filed the sum of $125.00 per week making a total of $1,375.00. He did not withhold income or FICA taxes from his salary, but agreed to reimburse the Trustee for appropriate sums due therefor.

As stated, there is no question but that the $10,000.00 loaned by Mrs. Van Dolson to the corporation was immediately disbursed to creditors of the corporation, thereby reducing the liabilities of the corporation.

The trustee seeks the following:

1. To set aside the mortgage lien by declaring the chattel mortgage given to Mrs. Van Dolson null and void for the following reasons:

(1) That it violates § 45-156 of the 1952 South Carolina Code.

(2) That the note and chattel mortgage were executed in violation of the bylaws of the corporation.

(3) That the chattel mortgage was fraudulent and therefore void under the provisions of Title 11, U. S. C. A., § 107 (d) (2) (a) (b) (c) (d).

(4) That the note and chattel mortgage violated the Statute of Elizabeth, § 57-301 South Carolina Code of Laws.

(5) That there was no consideration advanced for the mortgage.

(6) That at any rate only 50% consideration was advanced for the mortgage.

CONCLUSIONS OF LAW

Section 45-155 South Carolina Code provides that it shall be unlawful to take a mortgage for a greater amount than actually lent, and § 45-156 provides that all mortgages given as security for loans which on its face shall show an indebtedness greater than the amount actually received by the borrower in violation of § 45-155 are null and void and of no effect. If these statutes be construed literally, then Mrs. Van Dolson does not have a secured claim. The Referee has made an exhaustive search of the South Carolina law, and the sections mentioned have never been construed by our Supreme Court. As a matter of fact, similar statutes have been before the state courts of last resort on few occasions. A similar statute in the State of Connecticut has been construed by the Supreme Court of that state in *Whitney Frocks, Inc. v. Jaffe*, 1951, 138 Conn. 428, 85 A. (2d) 242, followed by the Court of Appeals for the Second Circuit, *In Re American Metal Products Co.*, 276 F. (2d) 701.

It is the Referee's opinion, that if a chattel mortgage is intentionally given by mortgagor and received by mortgagee for an amount greater than was actually received, that under the applicable statutes of South Carolina it is null and void. However, it is the opinion of the Referee that under the circumstances in which this mortgage was given, due to carelessness so often present among inexperienced businessmen, that there was no intent to give nor receive a mortgage in excess of the $10,000.00 actually loaned, and it amounted to a scrivener's error. I do not believe that Mrs. Van Dolson should be penalized for something over which she had no control. As is so often the case, a husband handles his wife's money as if it were his own resulting in just such situations as we have here.

The sections of the South Carolina Code complained of are drastic and punitive, and I am of the opinion that

our Supreme Court would hold that there must be an intent to violate them before a security instrument contrary to their terms will be held null and void. In the *American Metal Products Co.* case, 276 F. (2d) 701, there was dealing between two experienced, competent business concerns, and there is no question but that intent to do what was done was present.

Was the chattel mortgage null and void because it was executed pursuant to resolution of the sole stockholders of the corporation, Meyers and Van Dolson, because the latter was the husband of mortgagee? Admittedly, the transaction is suspect, but the fact remains that the $10,000.00, which unquestionably was the money of Mrs. Van Dolson, went into the corporation and was used by the corporation to pay debts of the corporation. Under the South Carolina law a wife is a femme sole.

The South Carolina cases cited by the Trustee announce the principle that a director who is qualified by reason of personal interest in a matter before a directors' meeting cannot be counted for the purpose of making out a quorum nor be counted to make up a majority vote to pass a resolution of the Board of Directors, *Peurifoy v. Loyal,* 134 S. C. 267, 151 S. E. 579; *Fidelity Fire Insurance Company v. Harby,* 156 S. C. 238, 153 S. E. 141; *Gilbert v. McLeod Infirmary,* 219 S. C. 174, 64 S. E. (2d) 524.

Is Mrs. Van Dolson to be penalized by the act of her husband in acting as a director of the corporation because he would be prohibited from so acting as an interested party for her contrary to the law of South Carolina above mentioned? As is some time the case as all practitioners have experienced, a wife can be wrecked by the acts of a husband who is a principal in a small unsuccessful corporation.

Based upon the above findings of fact and law, it is the Referee's opinion that Mrs. Van Dolson is entitled to a secured claim under her chattel mortgage in the amount $10,000.00 with interest thereon provided. As a matter of fact, there is no chance of her collecting the $10,000.00 as the inventory of her corporation was appraised at $8,000.00

after the adjudication in bankruptcy, and it is doubtful that it was worth that much.

It is further the opinion of the Referee that the giving of this mortgage was not in violation of 11 U. S. C. A. 107 and § 57-301, 1952 South Carolina Code of Laws.

In so far as the advancements of Van Dolson for which he reimbursed himself in the aggregate amount of $883.00 and $676.40, it is clear that these reimbursements amounted to a preference under the Bankruptcy Act and further elaboration is not deemed necessary and as held in my original Order, should be restored to the Trustee. It further appears, which was not covered in my original Order, that the salary drawn by Van Dolson for a period of eleven weeks commencing on April 23, 1960, at the rate of $125.00 per week or a total of $1,375.00 was excessive for the reason that he was the principal owner and was obviously interested in salvaging a sinking vessel, which by the time he commenced to draw this compensation he knew to be hopelessly insolvent, and that he should restore the money so drawn to the Trustee.

Based on my findings of fact and conclusions of law, it is:

ORDERED

1. That the chattel mortgage of Mrs. Ruth K. Van Dolson securing promissory note in the amount $10,676.00 is a valid obligation to the extent of $10,000.00 together with unpaid interest thereon.

2. That the funds which Van Dolson reimbursed himself from the till of the bankrupt corporation for advancements in the total amount $883.00 and 676.40 are unlawful preferences under the Bankruptcy Act, and the same shall be restored to the Trustee.

3. That the salary which Van Dolson paid to himself from the till of the bankrupt corporation in the total amount $1,375.00 amounts to an unlawful preference under the Bankruptcy Act, and such amount shall be restored to the Trustee.

W. C. BOYD,
Referee in Bankruptcy.

Columbia, South Carolina,
June 28, 1967.

UNITED STATES DISTRICT COURT, D. SOUTH CAROLINA, COLUMBIA DIVISION

DECEMBER 18, 1967

This court reviews, on application of the Trustee, the recapitulation of the Referee in Bankruptcy. He was directed to follow General Order 47 of the Supreme Court,[1] that he has made appropriate response. A rereading of the 11 U. S. C. foll. 53 by command of the United States Court of Appeals, Fourth Circuit.[2] It is the opinion of this court record convinces this court that the findings and conclusions of the Special Referee should be affirmed by this court. It should be "kept in mind" that the Referee, experienced as a lawyer and long in tenure as Referee, had before him the witnesses and was in the best position to determine the credibility of the testimony. It is significant that the record is absent any evidence or suspicion, of fraud.

Chiefly, the controversy involves the validity of a chattel mortgage executed by the bankrupt, a corporation chartered and doing business in South Carolina; to secure the payment of its note of $10, 676.40, which was given to the appellee for moneys advanced by her to the corporation. She was the wife of a director and officer, and was herself a director and officer. The trustees attacked the chattel mortgage on two grounds. The first was that the mortgage was void by virtue of sections 45-155 and 45-156, Code of Laws of South Carolina, 1952, declaring unlawful and invalid any mortgage in which the amount of the indebtedness therein stated to be secured is in excess of the sum actually received by the borrower. The second point was that the instrument was void because it was not executed and delivered either according to the corporate by-laws, as required by section 12-102(4) of the Code, or common-

[1] Unless otherwise directed in the order of reference the report of referee or of a special master shall set forth his findings of fact and *conclusions of law*, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may add report or may modify it or may reject it in whole or in part or receive further evidence or may recommit it with instructions. (Accent added.)

[2] 360 F. (2d) 611.

law principles governing transactions between corporations and interested officers and directors.

360 F. (2d) 611, 612.

It is uncontradicted that the mortgage was given as security to Mrs. Van Dolson for Ten Thousand ($10,000.00) dollars which was received by the corporation from her and disbursed to its creditors.

The transcript of record shows that all papers were prepared by W. L. Clifton, Esquire, who was acting as attorney for Mrs. Van Dolson, for the corporation, and for the Harpers and one (Johnson) who sold their stock to Mr. Van Dolson. The mortgage was prepared by him and signed by Mr. Van Dolson on behalf of the corporation. Mr. Van Dolson's testimony is without contradiction that he never knew that the corporation obligated itself to pay more than the Ten Thousand ($10,000.00) dollars until the date of the first hearing at which time he was shown this mortgage.

The testimony is completely uncontradicted to the effect that Mrs. Van Dolson has never at any time made claim for any amount in excess of the Ten Thousand ($10,000.00) dollars actually advanced by her. The cases cited in the brief of the trustee, both now before this court and in the Circuit Court are cases in which fraud was an element. It is obvious from a close reading of the record here that there was no attempt to defraud the creditors. On the contrary, the Ten Thousand ($10,000.00) dollars advanced by Mrs. Van Dolson to the corporation went to pay off Ten Thousand ($10,000.00) dollars worth of creditors. There is no showing that either Mr. or Mrs. Van Dolson or anyone in any way connected with them received any part of the Ten Thousand ($10,000.00) dollars and in fact all of the Referee's findings have been to the contrary. These findings are fully substantiated by the testimony.

The Referee has found that this wife advanced her Ten Thousand ($10,000.00) dollars in good faith. She withdrew her savings. She took a mortgage therefor which was, by mistake, drawn in the amount of Ten Thousand Six Hundred Seventy-Six and 40/100 ($10,676.40) dollars. The mistake was made by the scrivener who was the attorney for all parties concerned. The mistake was unknown to either

party until the advent of this hearing. There has been no claim at any time for any amount in excess of the Ten Thousand ($10,000.00) dollars actually loaned. All of the moneys so received were paid to *bona fide* creditors of the corporation. No showing has been advanced that the innocent mistake of the parties hereto has caused or brought about detriment to any person.

The second contention before the court is that the mortgage was executed in violation of the by-laws of the corporation and that a quorum was not present. Factually, the situation is that all of the holders of stock met in the back room of the store and agreed to the mortgage in question. Their common attorney was present and drew the mortgage the following day or shortly thereafter.

The trustee insists that Mr. Van Dolson "was interested" and that this interest would disqualify him from constituting a part of a quorum. In response to a question under rigorous and severe cross examination, Mr. Van Dolson admitted he "was interested." However, it is obvious that the interest professed by Mr. Van Dolson was not sufficient to bring this case under the cases relied upon by the trustee. It further appears he was interested in paying the money to the creditors. He received, in reality, no benefit from the money. It is apparent his hands are clean.

This statute has been construed within the jurisdiction of this court in the case of *Gilbert v. McLeod Infirmary*, cited at 64 S. E. (2d) 524, and the law set out therein plainly is based upon good faith between the parties and states that where the transaction was openly and fairly made and for adequate consideration, it will be sustained:

> The test just cited, revised Vol. 3, 1947, of Fletcher, beginning at page 329, sec. 913 *et seq.*, contains excellent exposition of the law relating to personal dealings of an officer or director with his corporation or its property, with copious citations of decided cases in the footnotes. From the extensive review of the authorities there is extracted the rule that when a director, in selling corporate property to himself, represents or joins in the representation of the corporation, the transaction is voidable at the option of the

corporation, or others suing in its behalf, merely upon proof of the fact stated; but when the purchasing director abstains from participation in behalf of the corporation and it is properly represented by others who are personally disinterested, the transaction will stand under attack if the director made full disclosure, paid full value, and the corporation has not been imposed upon; and the burden is upon the director to establish these requisites by evidence. Later herein the facts of the instant case will be tested by this rule, which we consider sound and correct. The respondents accede, in effect, to it; the following, from 3 Pom. Eq. Jur., 3rd Ed. 283 *et seq.*, appears in their brief: "In the case of corporations, which can only act through agents, there is often some difficulty in determining which of these two rules is applicable to a given transaction; *viz.*, in solving the question of fact, whether the director or officer was acting in the transaction as agent or representative of the corporation, as well as on his own behalf, in which case the second rule should apply, and the transaction should be absolutely voidable; or whether the corporation was effectively represented in the transaction by other agents, so that it may be said to have taken part therein 'knowingly', and thus the director or officer has merely the burden of proving the fairness and good faith of his contract."

Mr. Van Dolson has satisfied the Special Referee and this court of his fairness and good faith in the matter. So has his wife.

The Report of the Special Referee is affirmed.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL,
United States District Judge.

Rock Hill, South Carolina,
December 18, 1967

TRUE COPY.

Test:
MILLER C. FOSTER, JR.,
RALPH D. PRIESTER,
By: Deputy Clerk.

OPINION OF THE COURT OF APPEALS

JUNE 6, 1968

PER CURIAM:

After our decision of May 2, 1966, *Faucette, Trustee v. Van Dolson*, 360 F. (2d) 611, the District Court sent this cause to the Referee in Bankruptcy again. The inquiry directed was on the validity of the note and chattel mortgage in the sum of $10,676.40 given March 22, 1960, to Ruth K. Van Dolson for her loan of $10,000, by the bankrupt, Lighting Center, Inc., a South Carolina corporation conducting an electrical supply business in Sumter.

As noted in our first opinion, *supra*, the trustee in bankruptcy had questioned the lien. His position, first, was that since concededly the mortgagee had loaned the corporation only $10,000, the South Carolina statute [3] rendering a mortgage voidable for overstatement of the amount of the loan, nullified it. Secondly, his position rested on the absence of the requisite board authorization [4] for a corporate mortgage when a member is personally interested in the transaction, Ruth K. Van Dolson being the wife of a director. The District Court sought the fact findings and legal conclusions of the Referee upon the issue.

His subsequent report was, in substance, that the note and mortgage had been executed and delivered by the corporation with full knowledge and assent of all the stockholders and directors, that these papers represented a *bona fide* obligation, that the corporation had received from Ruth K. Van Dolson in cash a loan of $10,000, that there was no suggestion of fraud or overreaching, that she had never claimed more than $10,000 as owing to her, and that the statement in the mortgage of $10,676.40, instead of $10,000, as the amount of the loan was attributable to an innocent mistake, not chargeable to the mortgagee. On these facts the Referee concluded that the chattel mortgage was a valid and subsisting lien. These findings and conclusions were completely accepted by the District Judge. The trustee appeals.

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[3] Code of Laws of South Carolina, §§ 45-155, 156 (1952).

[4] *Id.*, § 12-102(4) (1952).

The facts just recited have generous support in the evidence, and the District Judge was thoroughly familiar with the State statutes and decisional law pertinent here. No different interpretations of the laws of South Carolina by her courts is cited to us. We have no reason to disturb the determination of the Referee and Judge.

Affirmed.